THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.23643 OF 2005

Dated: 28-02-2006

Between:

1.M/s.Balaji Godowns, rep. by its Managing

Partner Sri M.Suryanarayana Rao, and

5 others. … Petitioners

And

1. Andhra Pradesh State Warehousing Corporation,

   Rep. by its Managing Director, Warehousing Sadan,

   Nampally, Hyderabad and 3 others. .. Respondents

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WRIT PETITION NO.23643 OF 2005

ORDER:

The 1st petitioner – M/s. Balaji Godowns is a registered partnership firm, where as the petitioners 2 to 6 are its partners.

In pursuance of a policy decision taken by the Government of India for construction of godowns in different centres in the State of Andhra Pradesh, the 2nd respondent – Food Corporation of India (for short, 'the FCI') entered into an agreement dated 19-9-2001 with the 1st respondent – A.P. State Warehousing Corporation (for short, 'the APSWC') agreeing to give 7-Years-Guarantee for using godowns to be constructed by the APSWC and make such payments of storage charges to APSWC on par with Central Warehousing Corporation (CWC) subject to the specifications of godowns and services of storage being equal as per instructions issued by FCI Head-quarters from time to time. In pursuance thereof, the 1st respondent – APSWC issued a Short-tender Notice dated 2-2-2001 inviting offers from private parties for construction of godowns under 7-Years-Guarantee to be completed by 10-6-2001 for the storage of foodgrains at different places in the State. The petitioners were the successful bidders and accordingly the APSWC executed separate agreements dated 18-10-2001 with the petitioners 2 to 6 for construction of godowns of 5000 M.T. each for a total of 25,000 MT as per FCI specifications at Jammakunta. The agreements

contain a stipulation that the construction shall be completed before 5-2-2002 under 7-Years-Rent Guarantee Scheme given by the FCI. Though the petitioners commenced the constructions in time, it appears that the same could not be completed within the time-prescribed i.e., 5-2-2002. The petitioners stated that in the circumstances the Chief Minister of the State addressed a letter to the Government of India and in turn the Government of India by letter dated 26-3-2003 decided to waive the condition of completion of construction within the stipulated time subject to the condition that the investor will be entitled to the balance period of 7-Years-Rent Guarantee Scheme from the date of agreement. It is claimed that based upon the said assurance, the petitioners proceeded with the construction work and could complete the construction of the godown on 4-10-2004. However, since the respondents did not take over the godown nor paid the rent as per the terms of the agreement from the date of completion of construction, the petitioners filed W.P.No.7663 of 2005 and W.P.No.12337 of 2005 seeking a direction to the FCI to take possession of the godowns constructed by the petitioners which are ready for occupation. The said writ petitions were dismissed by this Court by order dated 9-9-2005 holding that there is no privity of contract with the Food Corporation of India so as to claim any legal right by the writ petitioners and therefore no Writ of Mandamus can be issued.

Admittedly, the said order has become final. However, the petitioners filed this writ petition contending that the action of the FCI in informing the APSWC that it is not feasible to take over the godowns as there is under-utilisation of godowns is arbitrary and illegal since such objection was not taken in respect of the other godowns which are similarly situated. Thus, according to the petitioners, the action of the respondents would amount to hostile discrimination based upon irrelevant consideration. It is also contended that the action of the respondents is contrary to the instructions of Government of India dated 26/27-3-2003 and that having induced them to complete the constructions they are estopped by refusing to take possession of the godown as per the agreements. Hence, this writ petition with the following prayer :

> *"… … … to issue a writ of Mandamus declaring the action of the respondents in not implementing the Government of India's instructions dated 26/27-3-2003 to takeover the 25,000 metric tonne godown constructed as per the agreement dated 18.10.2001 with 1st*

respondent with effect from the date on which the petitioners have completed the construction i.e., 7.7.2004 in terms of 7 years Rent Guarantee Scheme as totally illegal, without jurisdiction and in violation of Article 14 of Constitution of India and consequently direct the respondents to take over the petitioner's godown in terms of Govt. of India instructions dated 26/27-3-2003 and in terms of agreement dated 18.10.2001 with the 1st respondent with all consequential reliefs … … …."

I have heard the learned Counsel for the petitioners as well as the learned Counsel appearing for the respondents; and perused the material on record.

At the outset, it is to be noted that the fact that the Food Corporation of India is not a party to the agreements executed between the writ petitioners on the one hand and the APSWC on the other hand is not in dispute. The clause with regard to 7-Years-Guarantee has not been incorporated in the agreements executed between the APSWC and the petitioners. Admittedly, it only forms part of the terms and conditions of the agreement dated 18-10-2001 between FCI and A.P.S.W.C. As per the said clause, 7-Years-Guarantee for using the godown shall be applicable to the godowns where the construction is completed in all respects as per the FCI specifications and handed over to FCI within a period of four months from the date of agreement. In turn, Condition No.6(b) of the Agreement executed by APSWC in favour of the petitioners clearly provides that the APSWC reserves the right to refuse to take the godown on lease if the same is not leased out after completion by 5-2-2002 i.e., within 110 days from 18-10-2001 i.e., the date of agreement. Condition No.6 (c) also made it clear that for completion beyond 120 days, apart from levying penalty in the manner specified, the godown will be ineligible for occupancy by the APSWC during the current year. Having regard to the above terms and conditions, this Court dismissed W.P.Nos.7663 and 12337 of 2005 holding that there is no privity of contract between the FCI and the petitioners since admittedly the petitioners are not parties to the agreement of guarantee executed between APSWC on one hand and FCI on the other hand. Admittedly, the said order has become final. Hence, in the absence of any fresh cause of action, the petitioners cannot maintain the present writ petition with similar prayer as in the earlier writ petitions.

Though the learned Counsel for the petitioners contended that since the petitioners in this writ petition are seeking implementation of the instructions of the Government of India dated 26-3-2003, it cannot be said that the order in the earlier writ petitions operates as res judicata, I am unable to agree.

A perusal of the order in W.P.Nos.7663 and 12337 of 2005 shows that this Court having considered all the contentions raised by the petitioners including that the action of the FCI in declining to take over the godowns on the ground of non-feasibility is hit by the principles of promissory estoppel, held that since there is no legal duty on the part of the FCI to take possession of the godowns constructed by the petitioners on lease, no Mandamus can be issued to the FCI. The present writ petition is nothing but seeking review of the said order which has become final. Such a course is not open to the petitioners and the writ petition being misconceived is liable to be dismissed on that ground alone.

The learned Counsel for the petitioners while placing reliance upon the decision of the Supreme Court in FOOD CORPN. OF INDIA v. BHANU LODH contended that the FCI is bound by the instructions of the Government of India. The ratio laid down in the particular facts and circumstances of the said case is clearly distinguishable and does not attract to the case on hand.

The writ petition is misconceived and I do not find any justifiable reason to issue a writ of Mandamus compelling the respondents to take over the godowns constructed by the petitioners.

Accordingly, the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt . 28- 02-2006.

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